



**Part I. Short Title, Purpose and Scope..... 1**  
 Short Title..... 1  
 Purpose.....2  
 Scope.....2

**Part II. Interpretation ..... 2**  
 Headings .....2  
 References to Applicable Law .....2  
 No Relief of Duties .....3  
 Definitions .....3

**Part III. General ..... 4**  
 Operation .....4  
 Additional Requirements .....4

**Part IV. Business Licence..... 4**  
 Licence Display.....4  
 Business Relocation and Change of Ownership.....4  
 Application.....4  
 Approval.....5

**Part V. Penalty and Enforcement..... 5**  
 Enforcement .....5  
 Penalty.....6

**Part VI. Conflict and Transition ..... 6**  
 Conflict.....6  
 Terms Severable.....6  
 Repeal and Amendment.....6  
 Enactment .....6

**SCHEDULE 'A' – MOBILE FOOD BUSINESS REGULATIONS ..... 7**  
 Licence Application.....7  
 Operation .....7  
 Operating Locations .....7  
 Street Vendor Agreements.....7

**SCHEDULE 'B' – HAWKER PEDDLERS REGULATIONS ..... 8**  
 Licence Application.....8  
 Licence Expiry .....8  
 Operation .....8  
 Operating Locations .....8  
 Licence Display.....8  
 Signs.....8

**SCHEDULE 'C' – BED AND BREAKFAST REGULATIONS..... 9**  
 Licence Application.....9  
 Operational Changes .....9  
 Licence Display.....9  
 Signs.....9

**Consolidated Version**

*Verified March 18, 2015*

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2014-150 (Original)	September 9, 2014

*Consolidated for Convenience Only*

This is a consolidation copy of a City of Owen Sound By-law for convenience and information. While every effort is made to ensure the accuracy of this by-law, it is not an official version or a legal document. The original by-law should be consulted for all interpretations and applications on this subject. For more information or to view by-laws please contact the Clerks Department.

# Corporation of the City of Owen Sound

## By-law No. 2014-150

### A By-law to Provide for the Licence and Regulation of Businesses in the City of Owen Sound

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WHEREAS section 11(2) of the *Municipal Act, 2001* S.O. 2001 c.25 (the "Act") provides that municipalities may pass by-laws for the purpose of ensuring economic, social well-being of the municipality, and the health, safety and well-being of people in the municipality; and

WHEREAS section 151 of the Act provides for a system of business licences for any business wholly or partially carried on within the municipality and allows a municipality to prohibit the carrying on or engaging in the business without a licence, to refuse to grant a licence, to revoke or suspend a licence or to impose special conditions for a licence; and

WHEREAS section 445 of the Act provides that if a by-law has been contravened, the municipality may make an order requiring the person who contravened the by-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to do work to correct the contravention and that the municipality may provide that any person who contravenes such an order is guilty of an offence; and

WHEREAS section 447 of the Act provides that if an owner is convicted of knowingly carrying on or engaging in a trade, business or occupation without a licence required by a business licensing by-law, the court may order that the premises or part of the premises be closed for no longer than two years; and

WHEREAS section 447.1 of the Act provides that upon application, a Superior Court of Justice may issue an order for all or part of a premises to close if activities on the premises constitute a public nuisance which has a detrimental impact on the use and enjoyment of nearby property and the owner or occupants knew or ought to have known of the nuisance and did not take adequate steps to eliminate it; and

WHEREAS section 441 of the Act provides that the City's treasurer may give written notice of any fines imposed for the contravention of a business licensing by-law that become due and payable, the final date on which fines are payable, and if the fine remains unpaid after the final date, the fine is determined to be unpaid taxes; and

WHEREAS the Council of The Corporation of the City of Owen Sound (the "City") passed By-law No. 2005-115 to provide for the licensing of certain businesses, By-law No. 2005-025 to provide for the licensing of Tourist Homes, By-law No. 2005-125 to provide for the licensing of Street/Outdoor Vendors, By-law No. 1977-064 respecting Mobile Sound Equipment Operators, By-law No. 1971-3568 respecting Mobile Home Parks;

WHEREAS on August 25, 2014 the City passed Resolution R-140825-018 to pass the subject by-law to provide for the licence and regulation of businesses in place of existing by-laws which provide for the licensing and regulation of business;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF OWEN SOUND HEREBY ENACTS AS FOLLOWS:

#### **Part I. Short Title, Purpose and Scope**

##### **Short Title**

1. This by-law shall be known as the "Business Licensing By-law".

**Purpose**

2. This by-law has been enacted to licence and regulate Businesses to:
  - a. protect the economic well-being of the City;
  - b. prevent nuisance and maintain order in the City;
  - c. protect the health, safety and well-being of the citizens of the City;
  - d. ensure compliance with applicable rules and regulations, including building, zoning, fire safety and public health requirements; and
  - e. create a Business Licence registry.
3. For greater clarity, this by-law has not been enacted to endorse or guarantee:
  - a. the quality of products, workmanship or services provided by the Business; or
  - b. the skills or credentials of a Business owner, operator or employee.

**Scope**

4. This by-law shall apply to every Business Operating in the City except:
  - a. the fundraising activities of a not-for-profit Business, except where the activity involves a Mobile Food Business;
  - b. exhibitions, concerts, festivals and other organized public amusements held in accordance with a lease or agreement with the City;
  - c. Farmer's Market vendors or other temporary sale of farm products in the form of honey, maple syrup, or unprocessed fruits, vegetables and grains; and
  - d. Businesses set out in the *Municipal Act, 2001* or the regulations under it which the City does not have authority to regulate including:
    - i. the sale or service of liquor or any condition respecting containers of, or facilities for the return of, alcoholic beverages;
    - ii. a courier or transportation business or owners or drivers of vehicles used in courier or transportation business;
    - iii. a business of trading in real estate or persons registered under the Real Estate and Business Brokers Act who are carrying on business as real estate brokers, salespersons or brokerages;
    - iv. electricians, master electricians or electrical contractors;
    - v. any requirement for a tradesperson to complete examinations or obtain any certificate issued by the City in relation to their competence to perform the trade if they hold an Ontario College of Trades certificate of qualification in that trade;
    - vi. a manufacturing or an industrial business, except to the extent that it sells its products or raw material by retail;
    - vii. the sale of goods by wholesale; or
    - viii. the generation, exploitation, extraction, harvesting, processing, renewal or transportation of natural resources.

**Part II. Interpretation****Headings**

5. The division of this by-law into parts and the insertion of headings are for convenient reference only and shall not affect interpretation of the by-law.

**References to Applicable Law**

6. All references to applicable law are ambulatory and apply as amended from time to time.

### **No Relief of Duties**

7. The provisions of this by-law or issuance of a Business Licence shall not relieve any Person Operating a Business from Provincial business registration requirements or the requirements of any applicable by-law, act or regulation.

### **Definitions**

8. For the purposes of this by-law:

"Business" means any business wholly or partly Operating in the City even if the business is Operating from a location outside the City and includes:

- a. trades and occupations;
- b. exhibitions, concerts, festivals and other organized public amusements held for profit or otherwise;
- c. the sale or hire of goods or services on an intermittent or one-time basis and the activities of a Hawker Peddler; and
- d. the display of samples, patterns or specimens of goods for the purpose of sale or hire;

"Business Licence" means a valid licence issued by the City to a Business pursuant to this by-law;

"City" means the Corporation of the City of Owen Sound and a reference to the City is a reference to its geographical area or to the municipal corporation, as the context requires;

"City Clerk" means the Clerk of the City or their designate;

"Council" means the Council of the City;

"Enforcing Officer" means and includes a Police Officer of the Owen Sound Police Service; a By-law Enforcement Officer, Building Inspector, Fire Chief, Fire Prevention Officer or the Chief Building Official, appointed by the City; and the Medical Officer of Health of the Health Unit or their designate;

"*Health Protection and Promotion Act*" means the *Health Protection and Promotion Act*, R.S.O. 1990, c H.7;

"Health Unit" means the Grey Bruce Health Unit;

"Hawker Peddler" means a Person Operating a Business in the City, on a temporary basis or without leasing for longer than three months, or without owning property in the City, including Operating by way of:

- a. flyer or phone sales; or
- b. traveling from place to place or door to door;

"Home Based Business" means a Business within a dwelling unit or an accessory building or structure, which is an accessory use to the principle residential use by a resident therein;

"*Municipal Act, 2001*" means the *Municipal Act, 2001*, S.O. 2001, c. 25;

"Operate" or "Operating" when referring to a Business, includes carrying on, conducting, maintaining, owning or keeping the Business;

"Person" includes an individual, partnership, firm or corporation and any heirs, executors or legal representatives to whom the context can apply;

"*Provincial Offences Act*" means the *Provincial Offences Act*, R.S.O. 1990, c. P.33;

"Mobile Food Business" includes street food vending carts, mobile preparation premises and catering vehicles as defined in Ontario Regulation 562 under the *Health Protection and Promotion Act*;

"Summer Student Business" means a Business Operating under an Owen Sound and Area Business Enterprise Centre program for a summer Business Operated by a student and also includes individual ice cream bicycles Operating between May and September of a calendar year; and

"*Technical Standards and Safety Act, 2000*" means the *Technical Standards and Safety Act, 2000*, S.O. 2000, c. 16.

### Part III. General

#### Operation

9. No Person shall Operate a Business in the City without a Business Licence.
10. No Person shall Operate a Business in the City where a Business Licence has expired or been refused, revoked or suspended.
11. No Person shall Operate a Business in the City contrary to an order issued by an Enforcing Official or a Superior Court of Justice.

#### Additional Requirements

12. Without limiting any provision of this by-law, no Person shall Operate a Business described in Column 1 of the Table to this section without adhering to the requirements identified in Column 2 in the same row.

**Table**

<b>Column 1 - Business</b>	<b>Column 2 - Requirements</b>
Mobile Food Business	Set out in Schedule 'A'
Hawker and Peddler	Set out in Schedule 'B'
Home Based Businesses	Set out in the City's Zoning By-law
Bed & Breakfast	Set out in Schedule 'C'
Adult Entertainment	Set by the Owen Sound Police Services Board
Body Rub Parlour	Set by the Owen Sound Police Services Board
Escort Services	Set by the Owen Sound Police Services Board
Salvage Yards	Set by the Owen Sound Police Services Board
Secondhand Shops	Set by the Owen Sound Police Services Board
Taxi Businesses	Set by the Owen Sound Police Services Board

### Part IV. Business Licence

#### Licence Display

13. Every Person who Operates a Business in the City shall display a Business Licence as follows:
  - a. in a way which is visible to the public and Enforcing Officers, or
  - b. by carrying a copy with them while Operating a Hawker Peddler Business and showing it to any Person on request.

#### Business Relocation and Change of Ownership

14. Every Person who Operates a Business in the City shall apply for a Business Licence if the Business relocates to a new place or changes ownership.

#### Application

15. It is the responsibility of every Person who applies for a Business Licence to contact the Building, Planning and Fire departments and the Public Health Unit before submitting a Business Licence application to ensure that:
  - a. any required permits are received, and
  - b. the proposed Business meets all regulations.

16. Every Person who applies for a Business Licence shall provide the following to the City in the form or manner provided by the City:
- a. a complete Business Licence application;
  - b. a non-refundable Business Licence fee as set out in the City's Fees and Charges By-law;
  - c. a sign permit application, if required; and
  - d. any other document required by the City Clerk.

### **Approval**

17. Council hereby delegates authority to the City Clerk to issue Business Licences subject to the following conditions, limits, procedures and notice requirements:
- a. upon receipt, a Business Licence application shall be circulated to City departments and to the Health Unit as required;
  - b. the Clerk shall not issue the Business Licence until all parties which were circulated on the Business Licence application have confirmed that they have no objections to the proposed Business;
  - c. the City Clerk may issue Business Licences, subject to any applicable conditions, limits or expiry dates for the following Businesses:
    - i. a General Business;
    - ii. a Home Based Business;
    - iii. a Bed and Breakfast Business;
    - iv. a Mobile Food Business;
    - v. a Summer Student Business; and
    - vi. a Hawker Peddler Business; and
  - d. notice of all approved Business Licences will be included on the Council Agenda.

## **Part V. Penalty and Enforcement**

### **Enforcement**

18. The City Clerk and any Enforcing Officer may refuse, revoke or suspend a Business Licence, subject to any limits in the *Municipal Act, 2001*, under the following circumstances:
- a. non-payment of any fees, charges or outstanding fines;
  - b. non-compliance with an order, condition on a Business Licence or any provision of this by-law or any applicable by-law, Act or regulation;
  - c. as directed by Council; or
  - d. the continuation of the Business poses an immediate danger to the health or safety of any person or to any property.
19. Any Enforcing Officer may:
- a. enforce the provisions of this by-law;
  - b. inspect, at any reasonable time, any Business which is licenced or has applied for a Business Licence to determine if the Business complies with this by-law or any applicable by-law, Act or regulation;
  - c. issue a work order, order to discontinue activity or order to do any action or thing required to bring a Business into conformity with this by-law or any applicable by-law or any Act or regulation; or
  - d. apply to a Superior Court of Justice for an order for a Business to close where the conditions for public nuisance or lack of a Business Licence set out in the *Municipal Act, 2001* have been satisfied.

**Penalty**

20. Any Person who contravenes the provisions of this by-law is guilty of an offense and, upon conviction, is subject to the penalty set out in the *Provincial Offences Act*.
21. For the purposes of this by-law, each day that a contravention of this by-law continues constitutes a separate and distinct offence.
22. In addition to any other remedy provided for in law, where all or part of a fine under this by-law remains unpaid, such fine may be added to the tax roll for property owned in whole or in part by the Person upon whom the fine is imposed and collected as municipal taxes.

**Part VI. Conflict and Transition****Conflict**

23. In the event the provisions of this by-law are inconsistent with the provisions of the *Municipal Act, 2001*, its Regulations or any other Act, the provisions of the Act or Regulation shall prevail.

**Terms Severable**

24. The terms and provisions of this by-law shall be severable and should any term or provision be found by a court of competent jurisdiction to be legally unenforceable, inoperative or invalid, the remainder of the by-law shall continue to be in full force and effect.

**Repeal and Amendment**

25. The following by-laws are hereby repealed:
  - a. By-law No. 2005-025;
  - b. By-law No. 2005-115; and
  - c. By-law No. 2005-125.
26. Subsections 6b and 6c of By-law No. 1971-3568 are hereby repealed.
27. Sections 3, 4, 5, 6, 11 and 12 of By-law No. 1977-064 are hereby repealed.

**Enactment**

28. This by-law shall come into full force and effect upon the final passing thereof at which time all by-laws, policies and resolutions that are inconsistent with the provisions of this by-law are hereby amended or repealed insofar as it is necessary to give effect to the provisions of this by-law.

FINALLY PASSED AND ENACTED this 9<sup>th</sup> day of September, 2014.

*Signature on File*

\_\_\_\_\_  
Mayor Deborah A Haswell

*Signature on File*

\_\_\_\_\_  
Kristen M. Van Alphen, City Clerk

## Schedule 'A' – Mobile Food Business Regulations

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### **Licence Application**

1. In addition to the requirements set out in section 16 of this by-law, every Person applying for a Business Licence for a Mobile Food Business shall:
  - a. provide a photograph of the cart;
  - b. indicate the intended places of Operation.
  - c. arrange an inspection of the cart and its equipment by the Health Unit;
  - d. provide a Mobile Food Service Equipment (TSSA) form completed by a qualified inspector if fueled by propane or other cooking fuel; and
  - e. provide proof of \$2 million liability insurance naming the City as an additional named insured which provides 30 days prior written notice of any material amendment or cancellation of the policy to the City.

### **Operation**

2. Every Person Operating a Mobile Food Business shall ensure that:
  - a. the Mobile Food Business does not operate and is not on City property between the hours of 11:00 p.m. and 8:00 a.m. the following day;
  - b. accessible service is provided for any customer with a disability;
  - c. the area around the Mobile Food Business is clean and free of garbage, and any grease, sidewalk markings or snow is removed daily;
  - d. all health and safety regulations are followed, including those set out in Ontario Regulation 562 of the *Health Protection and Promotion Act* the *Technical Standards and Safety Act, 2000* and National Fire Protection Association Code 96;
  - e. the Business Licence is displayed on the Mobile Food Business; and
  - f. if a sign is displayed, it must conform to the City's Sign By-law.

### **Operating Locations**

3. No Person shall Operate a Mobile Food Business:
  - a. on a sidewalk or walkway which in any way blocks or creates a hazard to pedestrians; and
  - b. on any portion of a City highway or on-street parking space.
4. Subject to sections 5 and 6 of this schedule, Mobile Food Businesses shall not be Operated on property without the owner or occupier's permission.
5. To Operate a Mobile Food Business at a festival or event held in the City, the Operator must:
  - a. have permission from the organizers of the event; and
  - b. Operate in accordance with all event rules and regulations.
6. To Operate a Mobile Food Business on City property, including City parking lots, the Operator must:
  - a. have an approved lease or street vendor agreement; or
  - b. written permission from the Director of Community Services of the City to operate in a City park.

### **Street Vendor Agreements**

7. Council hereby delegates authority to the City's Manager of Economic Development and Tourism to approve Street Vendor Agreements subject to the following:
  - a. the term of the agreement is for a calendar year or less;
  - b. approval of Street Vendor agreements shall be determined by the best value for the City or on a first come, first served basis; and
  - c. only one street vendor shall operate at a location at a time.



## Schedule 'B' – Hawker Peddlers Regulations

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### **Licence Application**

1. Applicants shall complete a Business Licence application as set out in section 16 of this by-law.

### **Licence Expiry**

2. A Hawker Peddler Business Licence may be issued to:
  - a. a single Hawker Peddler Business for one week or the calendar year;
  - b. organizers of a special event with multiple Hawker Peddlers for the duration of the event, up to one year; or
  - c. a property owner for the calendar year to permit multiple Hawker Peddlers to Operate at the property.

### **Operation**

3. For greater clarity, a Business that has a City Business Licence is not required to purchase a Hawker Peddler Business Licence if their advertising involves flyer or phone sales or traveling from place to place or door to door.

### **Operating Locations**

4. Without written consent from the City, no Hawker Peddler shall Operate on any:
  - a. City property, including sidewalks, streets or highways; or
  - b. vacant lots in the City;

### **Licence Display**

5. Persons licenced as Hawker Peddlers who are travelling door to door shall:
  - a. carry a copy of their Business Licence with them; and
  - b. wear a tag identifying their name and the name of the Business.

### **Signs**

6. If a sign is displayed by a Hawker Peddler, it must be displayed in accordance with the City's Sign By-law.

## Schedule 'C' – Bed and Breakfast Regulations

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### **Licence Application**

1. In addition to the requirements set out in section 16 of this by-law, every Person applying for a Business Licence for a Bed and Breakfast shall provide:
  - a. a letter or sketch of the building which provides the following information:
    - i. name of applicant;
    - ii. business name;
    - iii. number, maximum occupancy and location in the building of each guest room;
    - iv. number and location in the building of each guest bathrooms;
    - v. number of parking spaces provided on site; and
    - vi. type of guest meals provided; and
  - b. proof of liability insurance of at least two million dollars satisfactory to the City including:
    - i. amount;
    - ii. name and address of policy carrier; and
    - iii. policy number.

### **Operational Changes**

2. Every Person Operating a Bed and Breakfast shall inform the City if any information provided in section 1 to this schedule changes.

### **Licence Display**

3. Every Person Operating a Bed and Breakfast shall ensure that the Business Licence is displayed in the Bed and Breakfast subject to section 13 of this by-law.

### **Signs**

4. If a sign is displayed by a Bed and Breakfast, it must be displayed in accordance with the City's Sign By-law.